

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOQUETTE N. WEYERMAN,

Plaintiff,

CASE No. 1:24-cv-285

v.

HON. ROBERT J. JONKER

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Kent's Report and Recommendation in this matter (ECF No. 12) and Plaintiff's Objections thereto (ECF No. 13). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on *de novo* reconsideration, he or she finds it justified.” 12 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3070.2 (3d ed. June 2024 update). Specifically, the Rules provide that:

The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). *De novo* review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Magistrate Judge recommends that the Court affirm the Commissioner's decision, reasoning that the ALJ properly considered Plaintiff's subjective complaints and that his decision

was based on substantial evidence. The Court has reviewed *de novo* the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's Objections. After its review, the Court finds that the Magistrate Judge's Report and Recommendation is factually sound and legally supported and affirms the decision of the Commissioner.

In advancing her objections, Plaintiff makes essentially the same arguments that she made before the Magistrate Judge. (See ECF No. 9, PageID.1198-1200, 1202-1203 (Initial Brief).) According to Plaintiff, the Magistrate Judge (1) "found that Plaintiff received conservative treatment but fails to address whether this treatment effectively alleviated her pain in contravention of case law and 20 C.F.R. § 404.1529" and (2) "found that Plaintiff's daily activities were indicative of non-disability although there is no explanation of how these activities contradict Plaintiff's complaints regarding standing and walking." (ECF No. 13, PageID.1233, 1235). But the Magistrate Judge made no such findings. Rather, the Magistrate Judge reviewed the ALJ's opinion in accordance with § 405(g) and determined that the ALJ's findings were supported by substantial evidence. The Court now does the same.

As acknowledged by the Magistrate Judge, the ALJ relied on more than simply a recital of Plaintiff's conservative treatment and litany of daily activities. Specifically, the ALJ did two things:

1. The ALJ discounted Plaintiff's statements regarding the intensity and persistence of her symptoms based on a plethora of medical findings including that:

- Plaintiff's left wrist surgery was successful, and Plaintiff presented with normal findings;
- Plaintiff's EMG showed no signs of cervical radiculopathy;
- X-ray imaging of Plaintiff's knees showed no significant findings;
- Plaintiff continued to choose to smoke against medical advice; and
- Plaintiff had normal respiratory findings while on medication. (ECF No. 5-2, PageID.47-50).

2. The ALJ acknowledged Plaintiff's limited postural functionality as well as her diagnoses of chronic pain syndrome and fibromyalgia, both of which she baked into the RFC. (*Id.*, PageID.48, 50.)

Significantly, none of Plaintiff's treating physicians called for an RFC that was more restrictive than the RFC the ALJ ultimately formulated.

ACCORDINGLY, IT IS ORDERED:

1. The Report and Recommendation of the Magistrate Judge, (ECF No. 12), is **APPROVED** and **ADOPTED** as the opinion of this Court.
2. Defendant Commissioner of Social Security's decision, (ECF No. 5-2, PageID.37-53), is **AFFIRMED**.

IT IS SO ORDERED.

Dated: March 21, 2024

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE